

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

RNK, Inc. d/b/a RNK Telecom, )  
Nuvio Corporation, Unipoint )  
Enhanced Services d/b/a PointOne, )  
Dialpad Communications, Inc., )  
Vonage Holdings Corp., and )  
VoEx, Inc. Petitions for Limited )  
Waiver of Section 52.15(g)(2)(i) )  
of the Commission's Rules Regarding )  
Access to Numbering Resources )  

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CC Docket No. 99-200

**REPLY COMMENTS OF  
VONAGE HOLDINGS CORP.**

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## **Summary**

Vonage Holdings Corp. (“Vonage”) submits these reply comments in response to comments filed in the above-referenced docket. Vonage is seeking a limited waiver of the Federal Communications Commission (“Commission”) numbering rules until such time as the Commission adopts numbering regulations applicable to providers of Voice over Internet Protocol (“VoIP”) services. Vonage’s request follows the Commission’s grant of similar relief to SBC Internet Services, Inc. (“SBC-IS”).

Pursuant to the *Waiver Order*, the Commission has established a policy of allowing VoIP service providers direct access to numbering resources on an interim basis until final rules are adopted. Given the adoption of this policy, the seminal question at this time is whether there are any concerns unique to Vonage or the other petitioners that would justify denial of their petitions. No such concerns exist. The objections raised by the various parties in opposition to the petitioners have already been considered and rejected by the Commission during the proceeding where the Commission examined SBC-IS’ petition. Thus, there is no basis for the Commission to deny Vonage’s petition when the Commission has already granted similar relief in the course of a proceeding that considered identical issues.

Vonage has repeatedly shown its commitment to developing and deploying a robust emergency services solution for its customers, even though Vonage has experienced significant difficulties in attempting to obtain access to facilities used to deliver E911/911 services that are controlled by several incumbents. It is important to recognize, however, that direct assignment of telephone numbers to VoIP providers is unrelated to concerns relating to the delivery of emergency services. Further, the

Commission recognized the irrelevance of emergency services and the applicable numbering regulations when it considered SBC-IS' petition. Accordingly, the Commission must follow course for similarly-situated parties like Vonage and other petitioners.

A number of parties have also raised concerns relating to number exhaust, number portability, number pooling and number resource optimization measures imposed at the state and federal levels. However, the Commission has made clear that SBC-IS and other petitioners, including Vonage, must comply with Commission numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices. Vonage affirmed it would do so in its petition, and as such, there is no basis for concern that Vonage will work outside of these rules. Additionally, no party has made any showing that would justify the adoption of any additional criteria that would be imposed solely only on VoIP providers and not other entities that are able to directly obtain numbering resources. Restricting competition and erecting artificial barriers to market entry for new technologies is an unacceptable form of number resource optimization.

Several parties also argue that the Commission should wait until the North American Numbering Council ("NANC") issues its report and makes recommendations before granting additional waivers. However, as the Commission has already established a policy of granting interim relief, it would be discriminatory to deny those petitions currently before the Commission after it has already granted a similar petition by SBC-IS. Denying these petitions after granting SBC-IS' would provide that company a significant

competitive advantage for an extended period of time, and would not serve the public interest.

Finally, VoIP providers without LEC affiliates should not be limited to the same facilities-readiness criteria as SBC-IS. Instead, the Commission should provide non-LEC-affiliated VoIP providers a number of options when demonstrating facilities-readiness to mirror the flexibility afforded to traditional providers of telecommunications services. Because of the important differences between the delivery of VoIP services and traditional telecommunications providers, VoIP providers require at least equivalent flexibility in meeting this requirement.

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**REPLY COMMENTS OF  
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Vonage Holdings Corp. ("Vonage") submits these reply comments in response to comments filed in the above-referenced docket. Vonage is seeking a limited waiver of the Federal Communications Commission ("Commission") numbering rules. Pursuant to 47 C.F.R. Section 52.15(g)(2)(i), the only entities that can receive direct assignment of numbering resources from the North American Numbering Administrator ("NANPA") and the Pooling Administrator ("PA") are either state-certificated providers of telecommunications services or wireless carriers. Vonage seeks a limited waiver of this rule until such time as the Commission adopts numbering regulations applicable to providers of Voice over Internet Protocol ("VoIP") services. Vonage's request follows the Commission's grant of similar relief to SBC Internet Services, Inc. ("SBC-IS").<sup>1</sup>

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<sup>1</sup> See *Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 00-50 (rel. Feb. 1, 2005) ("*Waiver Order*").

## **I. INTRODUCTION AND BACKGROUND**

In granting SBC-IS' request, the Commission explicitly stated "[t]o the extent that other entities seek similar relief [as SBC-IS] we would grant such relief to an extent comparable to what we set forth in this order."<sup>2</sup> Further, the Commission imposed certain conditions on SBC-IS in approving its petition for limited waiver. Specifically, SBC-IS must comply with all of the Commission's number resource optimization rules, including, but not limited to, local number portability, thousands-block number pooling, reporting requirements, and facilities-readiness.<sup>3</sup> Additionally, the Commission conditioned the relief sought by SBC-IS' on compliance with state authority over numbering administration and optimization measures where the Commission has delegated such authority to the relevant state regulatory commission.<sup>4</sup> Finally, the Commission explicitly stated that the grant of limited waiver would be interim in nature until rules were adopted for the assignment of numbering resources to providers of VoIP services. It is against this backdrop that the Commission must examine and consider similar petitions filed by Vonage and other parties.

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<sup>2</sup> *Waiver Order*, at ¶ 11.

<sup>3</sup> *See Waiver Order*, at ¶ 4. It is clear from the *Waiver Order* that the facilities-readiness requirement was adopted to serve a dual purpose: (1) to ensure that SBC-IS would be in a position to use numbers received from the NANPA and the PA; and (2) to safeguard against anticompetitive practices between SBC Communications, Inc. and its affiliate SBC-IS. *Id.* at ¶ 7. Vonage provides additional comments concerning this issue later in these reply comments.

<sup>4</sup> *See id.* In filing a petition seeking similar relief, Vonage agreed to comply with all of the Commission-mandated conditions set out in the *Waiver Order*. To the extent that certain parties misinterpreted Vonage's petition, Vonage again makes clear that the Company will comply with all of the conditions the Commission imposed on SBC-IS in the *Waiver Order*.

## **II. THE COMMISSION HAS ALREADY ADOPTED A POLICY PREFERENCE FOR GRANTING INTERIM AUTHORITY**

As an initial matter, Vonage believes it is necessary to define what is and what is not at issue in this proceeding. Vonage is seeking relief that has already been granted to one provider of VoIP services, SBC-IS. In that proceeding, Vonage cautioned the Commission that granting SBC-IS' request for waiver would provide SBC-IS with a competitive advantage over other VoIP service providers.<sup>5</sup> The Commission alleviated this concern by explicitly stating that the similar relief would be granted to other entities.<sup>6</sup> To do otherwise would provide SBC-IS with an unfair competitive advantage as compared to other VoIP service providers and would also be arbitrary and capricious. Accordingly, the Commission has already established a policy of allowing VoIP service providers direct access to numbering resources as an interim measure until such time as final rules are adopted.

Once it is understood that the Commission has adopted a policy for granting interim authority, the only remaining question is whether there are any concerns unique to Vonage or the other petitioners that would justify denial of their petitions. Vonage submits that not only are there no concerns that would justify denying Vonage's petition, but that the objections raised by the various parties in opposition to the petitioners were already considered and rejected by the Commission during the proceeding where the Commission examined SBC-IS' petition. As such, there would be no rational basis for the Commission to deny Vonage's petition when the Commission has already granted similar relief in the course of a proceeding that considered identical issues. Thus, the Commission must either grant Vonage's petition or, alternatively, deny it and revoke the authority it has already granted to SBC-IS.

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<sup>5</sup> See *Comments of Vonage Holdings Corp.* at 5 (filed Aug. 16, 2004).

<sup>6</sup> See *Waiver Order*, at ¶ 11.



### **III. EMERGENCY SERVICES AND DIRECT ACCESS TO NUMBERING RESOURCES ARE UNRELATED**

Vonage is committed to developing and deploying an emergency services solution for its customers that is comparable to those services that exist in the wireline world. Proof of this commitment can be found in Rhode Island where emergency calls originated by Vonage customers are delivered to the PSAP using the existing emergency services infrastructure with customer-provided location information. The Company has also entered into trials with Qwest to develop an E911/911 solution and recently Qwest has agreed to provide trunking and additional elements that will be useful in provisioning these solutions on a region-wide basis. Vonage has made clear, however, that it cannot offer such a solution without the cooperation of incumbent providers of telephone service since the facilities used to provide emergency services are controlled by incumbents.<sup>7</sup>

Unfortunately, Vonage has already experienced significant difficulties in attempting to obtain access to facilities used to deliver E911/911 services that are controlled by several incumbents. While Vonage is technically able to provide E911 call-back and location information, as demonstrated by its solution deployed in Rhode Island, the Company has been stymied in its efforts to expand that solution to other geographic areas by the incumbents who

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<sup>7</sup> See, e.g., Letter from Jeffrey Citron, Vonage Holdings Corp., to Ivan G. Seidenberg, Verizon Communications (Feb. 18, 2005); Letter from Jeffrey Citron, Vonage Holdings Corp., to F. Duane Ackerman, BellSouth Communications (Feb. 18, 2005); Letter from Jeffrey Citron, Vonage Holdings Corp., to Edward E. Whiteacre, Jr., SBC Communications (Feb. 18, 2005). See also Ex Parte Letter from William B. Wilhelm, Counsel for Vonage Holdings Corp. to Marlene H. Dortch, Federal Communications Commission Secretary, WC Docket No. 04-36 (filed Apr. 18, 2005) (containing letters to RBOCs concerning access to 911/E911 infrastructure, including letter to Qwest congratulating that company's decision to lease such access to Vonage).

control essential facilities upon which access is necessary to deploy such a solution.<sup>8</sup>

Alarming, incumbents deny Vonage access to the same 911 infrastructure that they make directly available to others, including their own affiliates.

One party has submitted comments recommending that all the VoIP providers seeking interim relief from the Commission's numbering rules "immediate pro[ve] that they are able to provide E-9-1-1 service as a condition of the waiver."<sup>9</sup> It is important to recognize that the direct assignment of telephone numbers to VoIP providers and concerns relating to emergency services are simply unrelated. Instead, anticompetitive practices by the incumbents that control E911/911 facilities stand as the largest obstacle to Vonage deploying a solution. Specifically, in order to deploy a E911/911 solution comparable to that which exists in the wireline world, VoIP providers need access to the E911 selective routers, the Master Street Address Guide and the Automatic Location Information databases – access that several incumbents will not provide even though these same elements are made available to wireless providers or, in some instances, their affiliated VoIP entities<sup>10</sup>. Further, there are some inherent limitations within the existing 911 emergency services network that must be addressed in order for VoIP providers to offer a robust E911/911 service.<sup>11</sup> Conditioning the grant of relief requested by Vonage and the other

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<sup>8</sup> Rhode Island is unique in that the state owns the emergency services infrastructure which made the process of accessing such infrastructure extremely efficient.

<sup>9</sup> *Texas 9-1-1 Alliance Comments* at 3 (filed Apr. 11, 2005). *See also Nebraska Public Service Comm'n Comments* at 6 (filed Apr. 11, 2005) ("Failure to connect the consumer to an appropriate PSAP in a manner consistent with Basic 911 should be a minimum requirement of VoIP providers seeking access to numbering resources.").

<sup>10</sup> *See Ex Parte Letter from William B. Wilhelm, Counsel for Vonage Holdings Corp. to Marlene H. Dortch, Federal Communications Commission Secretary, WC Docket No. 04-36, Attachment A* (filed Apr. 18, 2005).

<sup>11</sup> For example, some emergency systems are still using CAMA trunks, a technology from the 1970s, that induces call setup delays and has other limitations. Additionally, the ability of

non-ILEC petitioning parties would do nothing to bring about a E911/911 solution any quicker. As succinctly stated by the National Emergency Number Association “[w]hile it is tempting to make immediate [E911] availability a condition of the waivers – and we support, in spirit, the Texas commenters who have advanced this position – it may be sufficient to make the grants contingent on grantees’ ultimate compliance with the outcome of the general IP rulemaking.”<sup>12</sup>

Indeed the 911 access that Vonage seeks is unrelated to the numbering waivers under consideration in this proceeding. While Vonage shares the desire to roll out I2 and I3 VoIP E911 capabilities as quickly as possible – it is clear that *incumbent access* to this infrastructure is what must first be made available to improve VoIP 911 call delivery. Imposing conditions on Vonage’s waiver while incumbents deny Vonage access to the infrastructure necessary for improving the delivery of these calls cannot be reasonably contemplated or suggested as a remedy that will expedite the development of solutions for the delivery of emergency services to users of VoIP services. Vonage has concerns that such a condition would reward the ongoing anticompetitive practices of the incumbents and provide them with additional incentives to discriminate against providers of VoIP services.

Vonage already serves in excess of half a million customers and over tens thousand customers sign up for Vonage’s service on a weekly basis. Direct access to numbering resources would allow the Company to realize efficiencies that SBC Communications, Inc. is already able to take advantage of through its VoIP affiliate, SBC-IS. Incumbents like SBC Communications, Inc. also control access to the E911/911 facilities that Vonage requires access to in order to offer its emergency services solution. Conditioning the grant of the waiver on the immediate

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VoIP providers to use their service from any location that has broadband Internet accessibility also presents unique challenges for the delivery of emergency services.

<sup>12</sup> *NENA Comments* at 2 (filed Apr. 11, 2005) (internal citations removed).

availability of E911/911 service would provide a strong incentive for incumbents to continue their illegal practice of denying VoIP providers like Vonage access to E911/911 systems so as to frustrate competition in the communications marketplace.

Vonage may also be able to develop better E911/911 solutions if the Company were able to obtain direct access to numbering resources. As explained by numerous parties, direct access to numbering resources allows VoIP companies to explore numerous alternative PSTN interconnection configurations. Some of these architectures may allow for the more efficient delivery of emergency services. Ironically, imposing a condition requiring VoIP providers to demonstrate E911/911 capability prior to the direct assignment of telephone numbers may inadvertently erect barriers to developing emergency call delivery solutions.

It is also important to recognize that access to emergency services was already raised during the proceeding opened to consider SBC-IS' petition for limited waiver of the Commission's numbering rules. BellSouth Corporation filed comments recommending that the Commission examine SBC-IS' provision of emergency service prior to granting the petition.<sup>13</sup> The Commission declined to do so and must follow course for similarly situated parties like Vonage and other petitioners.

#### **IV. EXISTING FEDERAL AND STATE NUMBERING OPTIMIZATION RULES WILL CONTINUE TO APPLY**

A number of parties have raised concerns relating to number exhaust, number portability, number pooling and number resource optimization measures imposed at the state and federal levels.<sup>14</sup> To the extent that these concerns are premised on the notion that state and federal

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<sup>13</sup> *BellSouth Corporation Comments* at 3-4 (filed Aug. 16, 2004).

<sup>14</sup> *See, e.g., Nebraska Public Service Comm'n Comments* at 5 (filed Apr. 11, 2005) (concerning how waivers could put Nebraska area codes in jeopardy); *Iowa Util. Bd. Comments* at 2 (filed

number resource optimization rules will not apply to VoIP services providers, such concerns are misplaced. In granting SBC-IS limited waiver of the Commission's numbering rules, the Commission made clear that SBC-IS must "comply with the Commission's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices . . . ."<sup>15</sup> In its petition for limited waiver of the Commission's numbering rules, Vonage affirmed that the Company would also comply with federal and state numbering resource optimization rules.<sup>16</sup> As the Commission concluded, compliance with state and federal number resource optimization measures would ensure "that the limited numbering resources of the NANP are used efficiently."<sup>17</sup> Accordingly, between the dictates of the *Waiver Order* and Vonage's explicit commitment to abide by such rules, there is no cause for concern that VoIP providers will operate outside of these rules and the Commission specifically found that acting in accordance with state and federal numbering rules would guarantee efficient use of numbering resources.

Despite the Commission's clarity as to the applicability of state and federal number resource optimization rules to VoIP providers and that such compliance ensures the efficient use of numbering resources, some parties believe that additional measures are needed. Some parties

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Apr. 11, 2005) (concerning area code stability); *Maine Pub. Util. Comm'n Comments* at 2 (filed Apr. 11, 2005) (concerning compliance with state oversight and federal pooling, porting, and reporting requirements); and *Verizon Comments* at 1 (filed Apr. 11, 2005) (concerning number portability requirements).

<sup>15</sup> See *Waiver Order*, at ¶ 4.

<sup>16</sup> See *Vonage Petition*, at 2 ("Vonage will comply with all of the conditions established by the Commission in the *SBC-IS Waiver Order*."). See *id.*, at 6 ("Specifically, Vonage will comply with the Commission's numbering utilization and optimization requirements and industry guidelines and practices. Vonage will comply with all relevant numbering regulations.<sup>19</sup> Vonage will also file the Numbering Resource Utilization and Forecast Report ("NRUF"), will comply with the thousand-block number pooling requirements, and will continue to act in accordance with local number portability requirements.").

<sup>17</sup> See *Waiver Order*, at ¶ 9.

argue that the Commission should limit the supply of numbering resources available to VoIP providers to areas where pooling has been implemented and require that VoIP providers be pooling and porting capable before a VoIP provider obtains telephone numbers.<sup>18</sup> Vonage strongly objects to the imposition of any such requirements.

Restricting VoIP providers to numbering resources from rate centers in which pooling has been implemented would be an unacceptable barrier to market entry and competition. As the Commission has made eminently clear throughout all of its orders relating to numbering and has codified into its rules, numbering administration exists to: (1) facilitate entry into the communications marketplace; (2) *not unduly favor or disfavor any particular industry segment or group of communications consumers*; and (3) *not unduly favor one technology over another*.<sup>19</sup> If the Commission were to limit the geographic areas from which VoIP providers could obtain telephone numbers, the Commission would prejudice consumers that choose to utilize such service and grant a competitive advantage to providers of legacy services. Accordingly, adopting such a condition would be inconsistent with the Commission's rules.<sup>20</sup>

It is equally harmful to adopt some sort of additional demonstration by VoIP providers that they are capable of participating in number pooling prior to allowing such providers direct access to numbering resources. Legacy providers of telecommunications services have no such requirement. In fact, the Nebraska Public Service Commission comments that "[o]f the 283 rate

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<sup>18</sup> See, e.g. *Nebraska Pub. Serv. Comm'n Comments*, at 7; *Iowa Util. Bd. Comments* at 2-3 (filed Apr. 11, 2005); *Maine Pub. Util. Comm'n Comments* at 4 (filed Apr. 11, 2005).

<sup>19</sup> See 47 C.F.R. § 52.9(b).

<sup>20</sup> Some state commissions have argued that Vonage is not in compliance with Commission regulations due to the Company's practice of enabling customers to choose their area code. See e.g., *Maine Pub. Util. Comm'n Comments* at 3. Vonage will not repeat its rebuttal submitted to the Commission during consideration of SBC-IS' petition and incorporates these comments by reference. See *Vonage Reply Comments*, CC Docket No. 99-200, at 3-4 (filed Aug. 31, 2004).

centers in the 402 area code, only 46 are . . . subject to pooling requirements . . . carriers not pooling capable serve . . . 92 rate centers and currently hold state waivers for LNP.”<sup>21</sup>

It is curious that the Nebraska Public Service Commission would grant state waivers to certain carriers from implementing number portability – the technology that is a prerequisite for number pooling – and then advocate that VoIP service providers must be pooling capable in order to obtain telephone numbers. If number exhaust is a concern in the 92 rate centers where the carriers using numbering resources are not pooling capable, the answer is not to prohibit VoIP service providers from obtaining telephone numbers and imposing onerous requirements on such providers; rather, the Nebraska Public Service Commission should reconsider the wisdom of allowing certain carriers to escape number pooling requirements that allow for the continued inefficient use numbering resources. In fact, it is the inefficient use of numbering resources by telecommunications carriers in those 92 rate centers that raises number exhaust concerns, not VoIP providers.

The Commission cannot accept the recommendation advocated by any party suggesting that VoIP companies seeking waiver of the Commission’s numbering rules become subject to criteria that is not presently applicable to wireline and wireless carriers. The Commission declined to adopt any special procedures when granting SBC-IS’ waiver request. Neither competitive local exchange carriers, nor incumbent providers of telecommunications services, like those that serve the 92 rate centers in Nebraska, nor wireless carriers are required to make any showing concerning technical expertise when applying for numbering resources. No party has made a showing that would justify the adoption of any additional criteria that would be imposed solely only on VoIP providers and not other entities that are able to directly obtain

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<sup>21</sup> See *Nebraska Pub. Serv. Comm’n Comments* at 4 (filed Apr. 11, 2005).

numbering resources from the NANPA and the PA. Instead, VoIP providers should be able to obtain telephone numbers in the same manner as traditional telecommunications carriers, wireless providers, and SBC-IS without the encumbrance of any artificial conditions that would be uniquely applied to such service providers. In short, restricting competition and erecting artificial barriers to market entry for new technologies is an unacceptable form of number resource optimization.

**V. INTERIM RELIEF IS NEEDED NOW**

Some parties argue that the Commission should wait until the North American Numbering Council (“NANC”) issues its report and makes recommendations before granting additional waivers.<sup>22</sup> As detailed in Section II, *infra*, the Commission has already established a policy of granting interim relief until such time as rules are adopted. It would be patently unfair and discriminatory to allow one party, SBC-IS, to obtain telephone numbers directly from the NANPA and the PA, while denying others similar relief until such time as final rules are adopted. Indeed – Vonage cautioned the FCC about this very possibility in its comments on the SBC-IS waiver.<sup>23</sup> Further, assuming, *arguendo*, that the NANC were to provide a report and recommendation to the Commission as to what the NANC believes is the best way to proceed at the conclusion of its May 15, 2005 meeting – certainly an aggressive timeframe – the adoption of final rules will require notice and comment procedures that require a minimum of 60 days to conclude from public notice. After the comment period closes, the Commission would have to vote and release an order. While this process unfolds, SBC-IS would continue to be the sole VoIP provider with exclusive authority to directly obtain telephone numbers from the NANPA

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<sup>22</sup> *Iowa Util. Bd. Comments* at 3-4 (filed Apr. 11, 2005); *Nebraska Public Service Comm’n Comments* at 6 (filed Apr. 11, 2005); *Michigan Pub. Serv. Comm’n Comments* at 7 (filed Apr. 11, 2005).

<sup>23</sup> *See Comments of Vonage Holdings Corp.* at 6 (filed Aug. 16, 2004).



or the PA. Clearly, granting a company a competitive advantage of this magnitude for an extended period of time would not serve the public interest. Perhaps more importantly, in granting the SBC-IS petition and indicating that similar relief would be afforded to other entities, the Commission has already rejected such an alternative.

**VI. THE COMMISSION SHOULD ALLOW NON-LEC-AFFILIATED VoIP PROVIDERS THE SAME FLEXIBILITY PROVIDED TO TELECOMMUNICATIONS CARRIERS IN MEETING THE FACILITIES-READINESS REQUIREMENT**

VoIP providers without LEC affiliates should not be limited to the same facilities-readiness criteria as SBC-IS. Instead, the Commission should provide non-LEC-affiliated VoIP providers a number of options when demonstrating facilities-readiness to mirror the flexibility afforded to traditional providers of telecommunications services. When the Commission initially adopted the facilities-readiness criteria, the Commission observed that “allowing carriers to build inventories [of numbering resources] before they are prepared to offer service results in highly inefficient distribution of numbering resources and is counterproductive to [the Commission’s] goal of optimizing the use of numbering resources.”<sup>24</sup> The *Number Resource Optimization Order* provides further that carriers can demonstrate facilities-readiness in a number of ways including the provision of contracts for “unbundled network elements, network information showing that equipment has been purchased and is operational or will be operational, business plans, or interconnections agreements . . . .”<sup>25</sup> Accordingly, the purpose of the facilities-readiness criteria is to ensure that entities that receive numbering resources are in the position to

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<sup>24</sup> See *Number Resource Optimization*, Report and Order, FCC 00-104, at ¶ 96 (rel. Mar. 31, 2000).

<sup>25</sup> See *id.* at ¶ 97.

use such resources imminently and it is not meant to impose onerous requirements on recipients of such resources.

Critical differences between the delivery of VoIP services and traditional telecommunications providers must be recognized in determining how to apply the facilities-readiness requirement to VoIP providers. Vonage is a “pure” VoIP provider in that Vonage customers utilize their third-party broadband Internet service provider in order to make use of Vonage’s service. As such, Vonage does not need unbundled network elements or any other agreement with traditional providers of telecommunications services in order to obtain “last mile” connectivity with its customers. Instead, Vonage customers utilize Vonage’s service much like any other website. Further, as an unregulated provider of an information service, Vonage does not as of yet have the legal right of interconnection. Accordingly, it is highly unlikely that incumbent providers of telecommunications services would enter into interconnection agreements with providers like Vonage.

Due to technical differences between the provision of VoIP services and traditional telecommunications services, coupled with the legal status of VoIP providers, Vonage recommends that the Commission allow VoIP providers to comply with the facilities-readiness requirement by submitting to the NANPA or PA evidence that they have equipment in operation that allows for the exchange of traffic to the existing PSTN in time division multiplexing format. Evidence could take the form of an affidavit completed by an employee that the relevant VoIP provider: (1) owns or controls a softswitch; (2) that the softswitch is operational; and (3) that upon the receipt of numbering resources, the VoIP provider will be able to provide VoIP services to its customers using such equipment within 60 days. Allowing the submission of such evidence to meet the facilities-readiness criteria would ensure that VoIP service providers are in

a position to utilize imminently such resources and is consistent with other forms of evidence that the Commission allows traditional providers of telecommunications services to submit to comply with this requirement.

**VII. THE COMMISSION MUST CONTINUE TO REQUIRE SBC-IS TO COMPLY WITH ALL OF THE TERMS OF THE WAIVER ORDER**

The Commission adopted specific rules in connection with the way in which SBC-IS could demonstrate facilities-readiness. In order to comply with the facilities-readiness criteria, SBC-IS must either submit a copy of an interconnection agreement or “evidence that [SBC-IS] has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled services.”<sup>26</sup> The Commission concluded that these limited forms of evidence to demonstrate facilities-readiness were necessary to ensure that SBC Communications, Inc. and their affiliate SBC-IS did not engage in any discriminatory practices concerning network access.<sup>27</sup>

SBC-IS cleverly attempts to escape this minimal requirement by asserting that it does not object to allowing VoIP providers additional flexibility in demonstrating facilities-readiness “so long as [SBC-IS] is afforded the same opportunities to purchase connectivity from a diverse group of providers.”<sup>28</sup> The Commission cannot relax the existing facilities-readiness criteria for SBC-IS because it was adopted to serve the dual purpose of demonstrating facilities-readiness and preventing anticompetitive conduct on the part of SBC Communications, Inc. and SBC-IS. Accordingly, while non-LEC-affiliated providers of VoIP services should have a wide range of options in demonstrating facilities-readiness, the same does not hold true when the facilities-

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<sup>26</sup> See *Waiver Order*, at ¶ 10.

<sup>27</sup> See *id.*

<sup>28</sup> *SBC-IS Comments*, at 8 (filed Apr. 11, 2005).

readiness criteria adopted by the Commission is also meant to also prohibit anticompetitive conduct by a LEC affiliated entity.

## **VIII. CONCLUSION**

Vonage recommends that the Commission expeditiously grant its petition for limited waiver of the Commission's numbering rules. SBC-IS already has such authority and in order to level the competitive playing field, it is necessary for the Commission to act quickly on the petitions filed by Vonage and other parties. The Commission has already adopted a policy whereby the Commission will grant interim relief until such time as final rules are adopted concerning the use of numbering resources by VoIP providers. Accordingly, the Commission should meet this commitment and grant Vonage's petition.

As detailed in these reply comments, none of the issues raised by parties in opposition to the grant of such relief raise issues that would justify denial. Vonage continues to place a high priority on providing access to emergency service to its customers. Prohibiting direct assignment of numbering resources to VoIP providers until such time as VoIP providers can offer E911/911 services will do nothing to expedite the fulfillment of that goal. In fact, it will have the opposite effect by providing an additional incentive to incumbents to continue their anticompetitive practice of denying access to the facilities that comprise the emergency services network.

Likewise, the concerns relating to number pooling, number portability and state and federal number optimization rules are red herrings. The Commission has made clear that VoIP providers receiving numbering resources will be subject to such rules. Vonage has explicitly affirmed that the Company would comply with these rules. Similarly, adopting additional requirements for VoIP providers who seek numbering resources is anticompetitive and poor

public policy. Interim relief is needed now in advance of the adoption of VoIP-specific rules as the Commission already concluded in the *Waiver Order*.

The Commission should also allow non-LEC-affiliated VoIP providers additional flexibility in meeting the facilities-readiness criteria. Due to technical and legal differences between VoIP providers and telecommunications carriers, non-LEC-affiliated VoIP provider should have a wide array of options available to them in meeting this requirement. This would also be consistent with the range of options that is available to telecommunications providers. However, such flexibility should not be extended to entities like SBC-IS because specific facilities-readiness criteria was adopted by the Commission for SBC-IS to protect against anticompetitive conduct.

For the reasons detailed herein, the Commission should grant Vonage's petition for limited waiver of the Commissions numbering rules.

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Dated: April 26, 2005

### Certificate of Service

I, Bernadette Clark, certify that these Reply Comments of Vonage Holdings Corp. were served via first class mail to the persons on the attached service list on this date, except for the FCC and Best Copy and Printing, Inc. which were served via electronic filing, and except for those persons noted below (\*), which were served via hand delivery.

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